

SENATE BILL 681

By Bunch

AN ACT to amend Tennessee Code Annotated, Title 40,
Chapter 11, relative to bail and forfeiture of bail.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-11-139, is amended by designating existing subdivision (a) as (a)(1) and by deleting the second sentence from such subdivision, by designating existing subdivision (b) as (a)(2), and by adding the following as new subdivisions thereto:

(b) As used in this section, the term “department” means the department of commerce and insurance.

(c) A court shall in open court declare forfeited the bail bond if, without sufficient excuse, a defendant fails to appear for any of the following:

(1) Arraignment;

(2) Trial;

(3) Judgment; or

(4) Any other occasion prior to the pronouncement of judgment if the defendant’s presence in court is lawfully required.

(d) The clerk of the court shall, within fifteen (15) days of the entry of the forfeiture, mail notice of the forfeiture to the surety and to the bail agent whose names are printed on the bond. The bond shall plainly display the mailing address of both the statutory home office of the corporate surety and the bail agent. The forfeiture shall be mailed to the surety at the statutory home office and to the bail agent. Mailing solely to the surety or the bail agent shall not constitute compliance with this section.

(e) A certificate signed by the clerk of the court or the court’s designee, made under penalty of perjury, certifying that the notice required herein was mailed on a

specific date and accompanied by a copy of the required notice, shall constitute sufficient proof that such mailing was properly accomplished as indicated herein. The failure of the court or its designee to mail the notice as indicated herein shall result in the setting aside of the forfeiture and exoneration of the bail bond or money deposited. In all other cases, the forfeiture shall be paid in full within one hundred eighty (180) days of the date appearing on the certificate of mailing on the forfeiture notice.

(f) The surety or depositor shall be released of all obligations under the bond if any of the following conditions apply:

(1) The clerk fails to mail notice of forfeiture in accordance with this section within fifteen (15) days after the entry of the forfeiture;

(2) The clerk fails to mail the notice of forfeiture to the surety at the address printed on the bond; or

(3) The clerk fails to mail a copy of the notice of forfeiture to the bail agent at the address printed on the bond.

(g) If the defendant appears either voluntarily or in custody after surrender or arrest in court within one hundred eighty (180) days of the date of the mailing of the notice of forfeiture, the court shall on its own motion at the time that the defendant first appears in court on the case in which the forfeiture was entered, direct the order for forfeiture be vacated and the bond exonerated. If the court fails to so act on its own motion, then the surety's obligations under the bond shall be immediately vacated and the bond exonerated.

(h) If the forfeiture is not paid or set aside by order of a court of competent jurisdiction within one hundred eighty (180) days from the date of the mailing of the notice of forfeiture, the clerk of the court for the county where the order of forfeiture was made shall enter a judgment against the surety for the penal amount of the bond. Within

ten (10) days, the clerk shall furnish the department with a certified copy of the judgment and shall furnish the surety company at its home office a copy of the judgment, which shall reference the power of attorney number of the bond and the name of the executing agent. If the judgment is not paid within thirty (30) days, the clerk shall furnish the department and the sheriff of the county in which the bond was executed, or the official responsible for the operation of that county's jail, if other than the sheriff, two (2) copies of the judgment and a certificate stating that the judgment remains unsatisfied.

(i) If a motion to set aside the forfeiture or judgment is filed, as a condition of such filing and any subsequent order staying the enforcement of the judgment, the bail agent or surety shall pay the full amount of the judgment, in cash, to the clerk of the court. Such payment shall be held in escrow by the court until such time as the court has ruled on the motion. The filing of such motion, when accompanied by the required escrow deposit, shall act as an automatic stay on further proceedings, including execution of the judgment and notice to the department and sheriff, until such motion has been heard and a decision rendered by the court.

(j) If an appeal is taken from the court's adverse ruling on a motion to set aside, that ruling may be appealed, but there shall be no stay of collection proceedings absent the cash escrow remaining in place. Should a motion on appeal be ruled upon in favor of the surety, the escrowed funds shall be fully remitted within (10) days after certified copy of the order is delivered to the clerk.

(k) If, prior to the expiration of the one hundred eighty (180) day period, the surety or bail agent deposits funds in the full amount of the bail bond into an escrow account, maintained by the court, then the original one hundred eighty (180) day period shall be extended by an additional one hundred eighty (180) days. Timely payment of these funds is a condition precedent to the one hundred eighty (180) day extension and

shall not be waived by any court. The court may impose a fee of up to fifty dollars (\$50.00) for the cost of maintaining the escrow account. If within the extension period the order forfeiting bail is vacated and the bail bond exonerated for any reason, the court shall within thirty (30) days of the entry of such order return to the party that deposited the funds the formerly deposited funds plus interest, if any. After entry of summary judgment or after a final decision upholding the summary judgment on appeal, the court shall utilize funds deposited into the escrow account to satisfy the summary judgment. If the summary judgment is reversed, the bond amount shall be returned to the party that deposited the funds within thirty (30) days of the filing of the remittiture reversing the summary judgment.

(l) Surety bail bonds may not be executed anywhere in the state by any agent of the judgment debtor surety if a judgment has been entered which then remains unpaid, and the department shall notice the surety to this effect. No sheriff or other official empowered to accept or approve bail bonds anywhere in the state shall accept or approve a bond from an agent or surety company that has failed to pay a judgment after thirty-five (35) days from the entry of the judgment, until such judgment has been paid in full.

(m) When and if the judgment is satisfied or an order to vacate the judgment is entered by a court of competent jurisdiction, the clerk shall immediately notify the sheriff, or other official responsible for the operation of the county jail, if other than the sheriff, and the department of such payment or order vacating the judgment. The department shall thereupon give notice to the surety of their reinstatement.

(n) Within thirty (30) days of the expiration of the initial one hundred eighty (180) day period, assuming that the deposit described in subsections (i) or (k) has not been made, summary judgment shall be entered against the surety on the bond within thirty

(30) days. In the event that the deposit is made, the summary judgment shall be entered within thirty (30) days. Failure to satisfy the summary judgment within thirty (30) days of entry shall result in a suspension of that surety's right to post bail in the state.

Additionally, the court shall notify the department of the surety's non-payment.

(o) In the event that a forfeiture is paid, on application by the bail agent or surety brought at any time within three (3) years from the date of payment, the court shall order remission of the payment if:

(1) The bond is, for any cause, not a valid and binding undertaking in law. If it is valid and binding as to the principal, and one or more of the principal's sureties, if any, they shall not be exonerated from liability because of its being invalid and not binding as to another surety or sureties, if any. If it is invalid and not binding as to the principal, each of the sureties, if any, shall be exonerated by liability. If it is valid and binding as to the principal, but not so as to the sureties, if any, the principal shall not be exonerated, but the sureties, if any, shall be.

(2) The principal died before the forfeiture was taken.

(3) The principal was ill or some uncontrollable circumstance prevented the principal's appearance at court, and it must, in every such case, be shown that the principal's failure to appear arose from no fault on the principal's part.

(4) The indictment or information was not presented at the first term of the court held after the principal has been admitted to bail, in a case where the party was bound over before indictment or information, and the prosecution has not been continued by order of the court.

(5) The principal was incarcerated in any jurisdiction in the United States. A surety exonerated remains obligated to pay costs of court, and any reasonable and necessary costs incurred by a county to secure the return of the principal.

(p) For other good cause shown, the court in its discretion may remit to the surety all or part of the amount of the bond after deducting the costs of court and any reasonable necessary costs to the county for the return of the principal.

SECTION 2. This act shall take effect July 1, 2007, the public welfare requiring it.